

AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1453

**Introduced by Assembly Member Koretz
(Coauthor: Assembly Member Vargas)**

February 23, 2001

An act to add ~~Sections 22962, 22963, and 22964~~ *Division 8.7 (commencing with Section 22970)* to the Business and Professions Code, and to add Article 1.5 (commencing with Sections 104490) to Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, relating to tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

AB 1453, as amended, Koretz. Tobacco: display and use limitations.

Existing law provides for the establishment of programs relating to tobacco use prevention.

This bill would prohibit any person, firm, or corporation that displays at one or more retail locations any marketing device intended to advertise or promote the sale or consumption of any cigarette or tobacco product, including, but not limited to, shelf signs, window stickers or posters, and coupon dispensers, from placing the marketing device at a level that is lower than 4 3 feet from the floor, and would impose civil penalties for a violation of that provision.

This bill would also prohibit any person, firm, or corporation from displaying or making available any matches or ashtrays for public use on the premises where smoking is prohibited *with specified exceptions*,

and if this provision is violated would impose civil penalties for a violation of that provision.

This bill would additionally prohibit smoking a cigarette, cigar, or pipe within ~~250~~ 100 feet of any designated area in which children may reasonably be expected to congregate and would make violation of that prohibition an infraction. This bill, by creating a new infraction, would result in a state-mandated local program.

This bill would also prohibit the distribution of free samples of tobacco products by mail to anyone whose age ~~is not known to be over 18 years~~ *has not been previously identified as a smoker 18 years of age or older.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. This act shall be known as, and may be cited as,~~
2 ~~the Children's Protection from Tobacco Act of 2001.~~

3 ~~SEC. 2. Section 22962 is added to the Business and~~
4 ~~Professions Code, to read:~~

5 ~~22962. (a) Any person, firm, or corporation that displays at~~
6 *SECTION 1. Division 8.7 (commencing with Section 22970)*
7 *is added to the Business and Professions Code, to read:*

8
9 *DIVISION 8.7. CHILDREN'S PROTECTION FROM*
10 *TOBACCO ACT*

11
12 *22970. This division shall be known and may be cited as the*
13 *Children's Protection from Tobacco Act of 2001.*

14 *22971. (a) Any person, firm, or corporation that displays at*
15 *one or more retail locations any marketing device intended to*
16 *advertise or promote the sale or consumption of any cigarette or*
17 *tobacco product, including, but not limited to, shelf signs, window*
18 *stickers or posters, and coupon dispensers, shall not place the*

1 marketing device at a level that is lower than ~~four~~ *three* feet from
2 the floor.

3 (b) *For purposes of this section, the product itself shall not be*
4 *considered a marketing device.*

5 (c) The State Department of Health Services shall assess a civil
6 penalty for each violation of subdivision (a) according to the
7 following schedule:

8 (1) A civil penalty of five hundred dollars (\$500) for the first
9 violation.

10 (2) A civil penalty of seven hundred fifty dollars (\$750) for the
11 second violation *at the same location* within a five-year period.

12 (3) A civil penalty of one thousand dollars (\$1,000) for the
13 third or subsequent violation *at the same location* within a
14 five-year period.

15 ~~SEC. 3. Section 22963 is added to the Business and~~
16 ~~Professions Code, to read:~~

17 ~~22963.—~~

18 22972. (a) ~~No~~ *Except as provided in subdivisions (b) and (c),*
19 *no person, firm, or corporation shall display or make available*
20 *matches or ashtrays, or both, for public use on the premises where*
21 *smoking is prohibited under existing state law.*

22 (b) *Notwithstanding subdivision (a), a receptacle for*
23 *tobacco-related waste may be placed within five feet of a door*
24 *available for public entry onto the premises.*

25 (c) *Notwithstanding subdivision (a), matches or ashtrays, or*
26 *both, may be sold or distributed to the public on premises where*
27 *smoking is prohibited but only for use in areas where smoking is*
28 *not prohibited.*

29 ~~(b)—~~

30 (d) The State Department of Health Services shall assess the
31 civil penalty for each violation of subdivision (a) according to the
32 following schedule:

33 (1) A civil penalty of two hundred fifty dollars (\$250) for the
34 first violation.

35 (2) A civil penalty of five hundred dollars (\$500) for the second
36 violation.

37 (3) A civil penalty of one thousand dollars (\$1,000) for the
38 third and subsequent violation within a five-year period.

39 ~~SEC. 4. Section 22964 is added to the Business and~~
40 ~~Professions Code, to read:~~

1 ~~22964.—~~

2 22973. (a) No person, firm, or corporation shall provide free
3 samples of tobacco products by mail to anyone who has not been
4 previously identified as *a smoker* 18 years of age or older.

5 (b) The State Department of Health Services shall assess the
6 civil penalty for each violation of subdivision (a) according to the
7 following schedule:

8 (1) A civil penalty of two hundred *fifty* dollars (\$250) for the
9 first violation.

10 (2) A civil penalty of five hundred dollars (\$500) for the second
11 violation.

12 (3) A civil penalty of one thousand dollars (\$1,000) for the
13 third and subsequent violation within a five-year period.

14 22974. (a) *This division shall not preempt or otherwise*
15 *prohibit the adoption of a local standard that imposes greater*
16 *restrictions on the promotion of, use or access to tobacco products*
17 *than the restrictions imposed by this section.*

18 (b) *To the extent that there is an inconsistency between this*
19 *section and a local standard that imposes greater restrictions on*
20 *the promotion of, or the use or access to, tobacco products, the*
21 *greater restriction on the promotion of or, use or access to, tobacco*
22 *products in the local standard shall prevail.*

23 ~~SEC. 5.—~~

24 SEC. 2. Article 1.5 (commencing with Section 104490) is
25 added to Chapter 1 of Part 3 of Division 103 of the Health and
26 Safety Code, to read:

27

28 Article 1.5 Public Area Smoking Prohibitions

29

30 104490. (a) No person shall smoke a cigarette, cigar, or pipe
31 within ~~250~~ 100 feet of the boundaries of any public area during any
32 period in which children may reasonably be expected to
33 congregate at that public area, including, but not limited to, zoos,
34 parks, playgrounds, fairgrounds, carnivals, athletic fields, and
35 amusement parks that has been designated by the operator of that
36 public area as a nonsmoking area.

37 (b) Any person who violates subdivision (a) is guilty of an
38 infraction and shall be punished by a fine by the following
39 schedule:

40 (1) One hundred dollars (\$100) for the first violation.



1 (2) Two hundred dollars (\$200) for a second violation.

2 (3) Three hundred dollars (\$300) for a third or subsequent
3 violation within a five-year period.

4 104491. The following definitions shall govern the
5 construction of this article, unless the context requires otherwise:

6 (a) “Cigarette” means the same as defined in Section 104556.

7 (b) “Cigar” means the same as defined in Section 104550.

8 ~~SEC. 6.—~~

9 *SEC. 3.* No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.

